

Proposed technical amendment:

SECTION ____.(a) G.S. 69-25.15(d) reads as rewritten:

[§ 69-25.15. When district or portion thereof annexed by municipality furnishing fire protection.

(a) When the whole or any portion of a fire protection district has been annexed by a municipality furnishing fire protection to its citizens, then such fire protection district or the portion thereof so annexed shall immediately thereupon cease to be a fire protection district or a portion of a fire protection district; and such district or portion thereof so annexed shall no longer be subject to G.S. 69-25.4 authorizing the board of county commissioners to levy and collect a tax in such district for the purpose of furnishing fire protection therein.

(b) Nothing herein shall be deemed to prevent the board of county commissioners from levying and collecting taxes for fire protection in the remaining portion of a fire protection district not annexed by a municipality, as aforesaid.

(c) When all or part of a fire protection district is annexed, and the effective date of the annexation is a date other than a date in the month of June, the amount of the fire protection district tax levied on property in the district for the fiscal year in which municipal taxes are prorated under G.S. 160A-58.10 shall be multiplied by the following fraction: the denominator shall be 12 and the numerator shall be the number of full calendar months remaining in the fiscal year following the day on which the annexation becomes effective. For each owner, the product of the multiplication is the prorated fire protection payment. The finance officer of the city shall obtain from the assessor or tax collector of the county where the annexed territory was located a list of the owners of property on which fire protection district taxes were levied in the territory being annexed, and the city shall, no later than 90 days after the effective date of the annexation, pay the amount of the prorated fire protection district payment to the owners of that property. Such payments shall come from any funds not otherwise restricted by law.]

"(d) Whenever a city is required to make fire protection district tax payments by subsection (c) of this section, and the city has paid or has contracted to pay to a rural fire department funds under ~~G.S. 160A-37.1~~ or G.S. 160A-58.57, the county shall pay to the city from funds of the rural fire protection district an amount equal to the amount paid by the city (or to be paid by the city) to a rural fire department under ~~G.S. 160A-37.1~~ or G.S. 160A-58.57 on account of annexation of territory in the rural fire protection district for the number of months in that fiscal year used in calculating the numerator under subsection (c) of this section; provided that the required payments by the county to the city shall not exceed the total of fire protection district payments made to taxpayers in the district on account of that annexation."

SECTION ____.(b) G.S. 153A-304.1(d) reads as rewritten:

[§ 153A-304.1. Reduction in district after annexation.

(a) When the whole or any portion of a county service district organized for fire protection purposes under G.S. 153A-301(2) has been annexed by a municipality furnishing fire protection to its citizens, and the municipality had not agreed to allow territory within it to be within the county service district under G.S. 153A-302(a), then such county service district or the portion thereof so annexed shall immediately thereupon cease to be a county service district or a portion of a county service district; and such district or portion thereof so annexed shall no longer be subject to G.S. 153A-307 authorizing the board of county commissioners to levy and collect a tax in such district for the purpose of furnishing fire protection therein.

(b) Nothing in this section prevents the board of county commissioners from levying and collecting taxes for fire protection in the remaining portion of a county service district not annexed by a municipality.

(c) When all or part of a county service district is annexed, and the effective date of the annexation is a date other than a date in the month of June, the amount of the county service district tax levied on property in the district for the fiscal year in which municipal taxes are prorated under G.S. 160A-58.10 shall be multiplied by the following fraction: the denominator shall be 12 and the numerator shall be the number of full calendar months remaining in the fiscal year following the day on which the annexation becomes effective. For each owner, the product of the multiplication is the prorated fire protection payment. The finance officer of the city shall obtain from the assessor or tax collector of the county where the annexed territory was located a list of the owners of property on which fire protection district taxes were levied in the territory being annexed, and the city shall, no later than 90 days after the effective date of the annexation, pay the amount of the prorated fire protection district payment to the owners of that property. Such payments shall come from any funds not otherwise restricted by law.]

"(d) Whenever a city is required to make fire protection district tax payments by subsection (c) of this section, and the city has paid or has contracted to pay to a rural fire department funds under ~~G.S. 160A-37.1 or~~ G.S. 160A-58.57, the county shall pay to the city from funds of the county service district an amount equal to the amount paid by the city (or to be paid by the city) to a rural fire department under ~~G.S. 160A-37.1 or~~ G.S. 160A-58.57 on account of annexation of territory in the county service district for the number of months in that fiscal year used in calculating the numerator under subsection (c) of this section; provided that the required payments by the county to the city shall not exceed the total of fire protection district payments made to taxpayers in the district on account of that annexation."

Explanation: G.S. 69-25.15(d) and G.S. 153A-304.1(d) formerly referred to G.S. 160A-37.1 and G.S. 160A-49.1. G.S. 160A-37.1 and G.S. 160A-49.1 contained virtually identical language, but G.S. 160A-37.1 was located in a Part applying to cities of less than 5,000 people, and G.S. 160A-49.1 was located in a Part applying to cities of 5,000 or more people. In 2011, Section 1 of S.L. 2011-396 repealed the Part in which G.S. 160A-37.1 was located, and Section 2 of S.L. 2011-396 recodified G.S. 160A-49.1 as G.S. 160A-58.57. In other words, the General Assembly replaced two former sections, G.S. 160A-37.1 and G.S. 160A-49.1, with a single section, G.S. 160A-58.57. G.S. 160A-58.57 applies to all cities regardless of population. Therefore, G.S. 69-25.15(d) and G.S. 153A-304.1(d) should be amended to refer only to G.S. 160A-58.57.

Excerpt from S.L. 2011-396:

**SESSION LAW 2011-396
HOUSE BILL 845**

AN ACT TO REFORM THE INVOLUNTARY ANNEXATION LAWS OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

SECTION 1. Part 2 of Article 4A of Chapter 160A of the General Statutes is repealed.

SECTION 2. G.S. 160A-49.1 is recodified as G.S. 160A-58.57 under Part 7 of Article 4A of Chapter 160A of the General Statutes, as created by Section 8 of this act.

...

SECTION 14. This act is effective when it becomes law and applies to annexations initiated by municipalities on or after that date and to petitions for annexation under Part 1 and Part 4 of Article 4A of Chapter 160A of the General Statutes presented on or after that date. Annexations initiated prior to the effective date of this act by any action under Part 2 or Part 3 of Article 4A of Chapter 160A of the General Statutes, but for which an annexation ordinance has not been adopted, shall terminate and may be reinitiated in compliance with Part 7 of Article 4A of Chapter 160A of the General Statutes as enacted by this act.

In the General Assembly read three times and ratified this the 17th day of June, 2011.

s/ Walter H. Dalton
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

This bill having been presented to the Governor for signature on the 20th day of June, 2011 and the Governor having failed to approve it within the time prescribed by law, the same is hereby declared to have become a law. This 1st day of July, 2011.

s/ Karen Jenkins
Enrolling Clerk

Background statutes:

Former § 160A-37.1. Contract with rural fire department. (located in former Part 2. Annexation by Cities of Less Than 5,000.)

(a) If the area to be annexed described in a resolution of intent passed under G.S. 160A-37(a) includes an area in an insurance district defined under G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes, or a fire service district under Article 16 of Chapter 153A of the General Statutes, and a rural fire department was on the date of adoption of the resolution of intent providing fire protection in the area to be annexed, then the city (if the rural fire department makes a written request for a good faith offer, and the request is signed by the chief officer of the fire department and delivered to the city clerk no later than 15 days before the public hearing) is required to make a good faith effort to negotiate a five-year contract with the rural fire department to provide fire protection in the area to be annexed.

(b) If the area is a rural fire protection district or a fire service district, then an offer to pay annually for the term of the contract the amount of money that the tax rate in the district in effect on the date of adoption of the resolution of intent would generate based on property values on January 1 of each year in the area to be annexed which is in such a district is deemed to be a good faith offer of consideration for the contract.

(c) If the area is an insurance district but not a rural fire protection district or fire service district, then an offer to pay annually over the term of the contract the amount of money which is determined to be the equivalent of the amount which would be generated by multiplying the fraction of the city's general fund budget in that current fiscal year which is proposed to be expended for fire protection times the tax rate for the city in the current year, and multiplying that result by the property valuation in the area to be annexed which is served by the rural fire department is deemed to be a good faith offer of consideration for the contract; Provided that the payment shall not exceed the equivalent of fifteen cents (15¢) on one hundred dollars (\$100.00) valuation of annexed property in the district according to county valuations for the current fiscal year.

(d) Any offer by a city to a rural fire department which would compensate the rural fire department for revenue loss directly attributable to the annexation by paying such annually for five years, is deemed to be a good faith offer of consideration for the contract.

(e) Under subsections (b), (c), or (d) of this section, if the good faith offer is for first responder service, an offer of one-half the calculated amount under those subsections is deemed to be a good faith offer.

(f) This section does not obligate the city or rural fire department to enter into any contract.

(g) The rural fire department may, if it feels that no good faith offer has been made, appeal to the Local Government Commission within 30 days following the passage of an annexation ordinance. The rural fire department may apply to the Local Government Commission for an order staying the operation of the annexation ordinance pending the outcome of the review. The Commission may grant or deny the stay in its discretion upon such terms as it deems proper, and it may permit annexation of any part of the area described in the ordinance concerning which no question for review has been raised, provided that no other appeal under G.S. 160A-38 is pending.

(h) The Local Government Commission may affirm the ordinance, or if the Local Government Commission finds that no good faith offer has been made, it shall remand the ordinance to the municipal governing board for further proceedings, and the ordinance shall then not become effective unless the Local Government Commission finds that a good faith offer has been made.

(i) Any party to the review under subsection (h) may obtain judicial review in accordance with Chapter 150B of the General Statutes.

Former § 160A-49.1. Contract with rural fire department. (Located in former Part 3. Annexation by Cities of 5,000 or More.)

(a) If the area to be annexed described in a resolution of intent passed under G.S. 160A-49(a) includes an area in an insurance district defined under G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes, or a fire service district under Article 16 of Chapter 153A of the General Statutes, and a rural fire department was on the date of adoption of the resolution of intent providing fire protection in the area to be annexed, then the city (if the rural fire department makes a written request for a good faith offer, and the request is signed by the chief officer of the fire department and delivered to the city clerk no later than 15 days before the public hearing) is required to make a good faith effort to

negotiate a five-year contract with the rural fire department to provide fire protection in the area to be annexed.

(b) If the area is a rural fire protection district or a fire service district, then an offer to pay annually for the term of the contract the amount of money that the tax rate in the district in effect on the date of adoption of the resolution of intent would generate based on property values on January 1 of each year in the area to be annexed which is in such a district is deemed to be a good faith offer of consideration for the contract.

(c) If the area is an insurance district but not a rural fire protection district or fire service district, then an offer to pay annually over the term of the contract the amount of money which is determined to be the equivalent of the amount which would be generated by multiplying the fraction of the city's general fund budget in that current fiscal year which is proposed to be expended for fire protection times the tax rate for the city in the current year, and multiplying that result by the property valuation in the area to be annexed which is served by the rural fire department is deemed to be a good faith offer of consideration for the contract; Provided that the payment shall not exceed the equivalent of fifteen cents (15¢) on one hundred dollars (\$100.00) valuation of annexed property in the district according to county valuations for the current fiscal year.

(d) Any offer by a city to a rural fire department which would compensate the rural fire department for revenue loss directly attributable to the annexation by paying such amount annually for five years, is deemed to be a good faith offer of consideration for the contract.

(e) Under subsections (b), (c), or (d) of this section, if the good faith offer is for first responder service, an offer of one-half the calculated amount under those subsections is deemed to be a good faith offer.

(f) This section does not obligate the city or rural fire department to enter into any contract.

(g) The rural fire department may, if it feels that no good faith offer has been made, appeal to the Local Government Commission within 30 days following the passage of an annexation ordinance. The rural fire department may apply to the Local Government Commission for an order staying the operation of the annexation ordinance pending the outcome of the review. The Commission may grant or deny the stay in its discretion upon such terms as it deems proper, and it may permit annexation of any part of the area described in the ordinance concerning which no question for review has been raised, provided that no other appeal under G.S. 160A-50 is pending.

(h) The Local Government Commission may affirm the ordinance, or if the Local Government Commission finds that no good faith offer has been made, it shall remand the ordinance to the municipal governing board for further proceedings, and the ordinance shall then not become effective unless the Local Government Commission finds that a good faith offer has been made.

(i) Any party to the review under subsection (h) may obtain judicial review in accordance with Chapter 150B of the General Statutes.

Current § 160A-58.57. Contract with rural fire department. (Located in current Part 7. Annexations Initiated by Municipalities.)

(a) If the area to be annexed described in a resolution of intent passed under G.S. 160A-58.55(c) includes an area in an insurance district defined under G.S. 153A-233, a rural fire

protection district under Article 3A of Chapter 69 of the General Statutes, or a fire service district under Article 16 of Chapter 153A of the General Statutes, and a rural fire department was on the date of adoption of the resolution of intent providing fire protection in the area to be annexed, then the city (if the rural fire department makes a written request for a good faith offer, and the request is signed by the chief officer of the fire department and delivered to the city clerk no later than 15 days before the public hearing) is required to make a good faith effort to negotiate a five-year contract with the rural fire department to provide fire protection in the area to be annexed.

(b) If the area is a rural fire protection district or a fire service district, then an offer to pay annually for the term of the contract the amount of money that the tax rate in the district in effect on the date of adoption of the resolution of intent would generate based on property values on January 1 of each year in the area to be annexed which is in such a district is deemed to be a good faith offer of consideration for the contract.

(c) If the area is an insurance district but not a rural fire protection district or fire service district, then an offer to pay annually over the term of the contract the amount of money which is determined to be the equivalent of the amount which would be generated by multiplying the fraction of the city's general fund budget in that current fiscal year which is proposed to be expended for fire protection times the tax rate for the city in the current year, and multiplying that result by the property valuation in the area to be annexed which is served by the rural fire department is deemed to be a good faith offer of consideration for the contract; Provided that the payment shall not exceed the equivalent of fifteen cents (15¢) on one hundred dollars (\$100.00) valuation of annexed property in the district according to county valuations for the current fiscal year.

(d) Any offer by a city to a rural fire department which would compensate the rural fire department for revenue loss directly attributable to the annexation by paying such amount annually for five years, is deemed to be a good faith offer of consideration for the contract.

(e) Under subsections (b), (c), or (d) of this section, if the good faith offer is for first responder service, an offer of one-half the calculated amount under those subsections is deemed to be a good faith offer.

(f) This section does not obligate the city or rural fire department to enter into any contract.

(g) The rural fire department may, if it feels that no good faith offer has been made, appeal to the Local Government Commission within 30 days following the passage of an annexation ordinance. The rural fire department may apply to the Local Government Commission for an order staying the operation of the annexation ordinance pending the outcome of the review. The Commission may grant or deny the stay in its discretion upon such terms as it deems proper, and it may permit annexation of any part of the area described in the ordinance concerning which no question for review has been raised, provided that no other appeal under G.S. 160A-58.60 is pending.

(h) The Local Government Commission may affirm the ordinance, or if the Local Government Commission finds that no good faith offer has been made, it shall remand the ordinance to the municipal governing board for further proceedings, and the ordinance shall then not become effective unless the Local Government Commission finds that a good faith offer has been made.

(i) Any party to the review under subsection (h) may obtain judicial review in accordance with Chapter 150B of the General Statutes.

Email conversation:

From: Bly Hall (Bill Drafting)
Sent: Friday, October 28, 2016 06:49 PM
To: 'Bluestein, Frayda S'
Cc: Kim Hibbard; David Unwin (Bill Drafting)
Subject: RE: Annexation citation issue

Frayda,

Thanks for bringing this to my attention.

I have checked my notes, and yes, LexisNexis found the two references to former G.S. 160A-49.1 in G.S. 153A-304.1 and G.S. 69-25.15. I authorized making the substitution to the new section G.S. 160A-58.57 because S.L. 2011-396 expressly recodified G.S. 160A-49.1 as G.S. 160A-58.57. This is essentially a label change in a G.S. number that I can make as codifier. Because G.S. 160A-37.1 was repealed, I couldn't do anything as codifier to fix that reference. We need a technical correction to remove it in G.S. 153A-304.1 and G.S. 69-25.15. A fix to those sections should have been included in my list of potential technical corrections for 2012, but apparently they were overlooked when I made my list.

We'll add them to the list for next year.

Thanks again, and I hope this clears things up. Please let me know if you have any questions.

Bly

From: Bluestein, Frayda S [<mailto:bluestein@sog.unc.edu>]
Sent: Friday, October 28, 2016 1:26 PM
To: Bly Hall (Bill Drafting)
Cc: Kim Hibbard
Subject: Annexation citation issue

Hi Bly:

Thanks for taking my call today. To restate the issue the called about: When the involuntary annexation laws were revised in 2011, the two existing provisions (one for units under 5,000 population, and one for unit 5,000 or more) were repealed and recodified as one new set of provisions for all cities. There was a cross reference to the old statutes in two parallel provisions relating to annexations that affect county fire districts (G.S. 153A-304.1(d)) or rural fire districts (69-25.15(d)). (I think I said "c" on the phone, but it's "d".) I've set out the language below as it is in the statutes now:

§ 153A-304.1.

(d) Whenever a city is required to make fire protection district tax payments by subsection (c) of this section, and the city has paid or has contracted to pay to a rural fire department funds under **G.S. 160A-37.1 or G.S. 160A-58.57**, the county shall pay to the city from funds of the county service district an amount equal to the amount paid by the city (or to be paid by the city) to a rural fire department under **G.S. 160A-37.1 or G.S. 160A-58.57** on account of annexation of territory in the county service district for the number of months in that fiscal year used in calculating the numerator under subsection (c) of this section; provided that the required payments by the county to the city shall not exceed the total of fire protection district payments made to taxpayers in the district on account of that annexation. (1987, c. 711, s. 1; 2008-134, s. 76(b).)

§ 69-25.15. When district or portion thereof annexed by municipality furnishing fire protection.

(d) Whenever a city is required to make fire protection district tax payments by subsection (c) of this section, and the city has paid or has contracted to pay to a rural fire department funds under **G.S. 160A-37.1**

or G.S. 160A-58.57, the county shall pay to the city from funds of the rural fire protection district an amount equal to the amount paid by the city (or to be paid by the city) to a rural fire department under G.S. 160A-37.1 or G.S. 160A-58.57 on account of annexation of territory in the rural fire protection district for the number of months in that fiscal year used in calculating the numerator under subsection (c) of this section; provided that the required payments by the county to the city shall not exceed the total of fire protection district payments made to taxpayers in the district on account of that annexation. (1957, c. 1219; 1985, c. 707, ss. 1, 2; 1987, c. 45, s. 1.)

Before the recodification in 2011, the references were 160A- 37.1 (under 5,000) and 160A-49.1 (over 5,000). The citation after the 2011 revision is just a single statute, G.S. 160A-58.57. The note for the Chapter 153A provision indicates that the new statute was substituted for the reference to 160A-49.1, but the other repealed statute (160A-37.1) remains in the statute. The note for the Chapter 69 provision notes the same substitution, but goes on to note that the 160A-37.1 provision has been repealed, but it remains in the statute.

My colleague Kara and I were working on an inquiry when we noticed this so I thought it might be helpful to bring it to your attention. I'm copying Kim Hibbard with the League of Municipalities as she is quite familiar with these statutes and may have some knowledge about what might have taken place with these revisions.

This is not an urgent matter, so I appreciate receiving any thoughts or suggestions you have at your convenience.

Thanks!

Frayda

Frayda S. Bluestein

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